



PATENT
Attorney Docket No. 08/412,114
Attorney Docket No. 8366.0005-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Zbylut J. TWARDOWSKI et al.

Application No.: 08/412,114

Filed: March 28, 1995

For: MULTIPLE LUMEN CATHETER
FOR HEMODIALYSIS

) Group Art Unit: Unknown

) Examiner: Unknown

) Confirmation No.: Unknown

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), Applicants bring to the attention of the Examiner the documents on the attached listing. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final action, Quayle action, or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$180.00 as specified by Section 1.17(p).

This application is being returned to *ex parte* prosecution following a patent interference (Interference No. 103,988) between the party Twardowski et al., whose assignee is Curators of the University of Missouri (the University), and Martin et al., whose assignee is Vas-Cath, Inc. (Vas-Cath), a subsequent district court action under 35 U.S.C. § 146, and two subsequent Federal Circuit appeals of that district court action. Twardowski et al. intends to file a Preliminary Amendment shortly.

In the interference, Twardowski et al. was awarded priority of invention, with the Board finding that Twardowski et al. is entitled to a patent on claims corresponding to the interfering subject matter. The § 146 district court action seeking review of the PTO decision was first brought by Vas-Cath in the U.S. District Court for the District of Columbia, and was later transferred to the U.S. District Court for the Western District of Missouri, where it was twice dismissed with prejudice (Case No. 05-0400-CV-W-GAF). After the § 146 action was first dismissed, Vas-Cath filed an appeal to the Court of Appeals for the Federal Circuit, which reversed the district court's action. The district court subsequently dismissed the § 146 action a second time, and while Vas-Cath appealed that second dismissal to the Federal Circuit, on motion by Vas-Cath, the Federal Circuit dismissed the appeal on March 17, 2008 (Appeal No. 2008-1159). For the Examiner's convenience, attached are copies of the Board's decision awarding priority to Twardowski et al. dated July 30, 2003 (with corrections dated August 11, 2003) (Exhibit A), the Missouri Court's decision dated December 6, 2007 and order of judgment in Twardowski's favor dated December 7, 2007 (Exhibit B), and the Federal Circuit's order of dismissal dated March 17, 2008 (Exhibit C).

The listed documents include patents and documents that are part of the record of Interference No. 103,988. Additionally, the list includes documents that are part of the record of the subsequent district court action brought by Vas-Cath, Inc. Finally, the list includes documents that were part of the record of two Federal Circuit actions related to the district court action. Copies of the listed foreign and non-patent literature documents are attached. Copies of the U.S. patent publications are not enclosed.

For the Examiner's convenience, copies of the pleadings and exhibit indices from Interference No. 103,988, the district court actions and the Federal Circuit appeals are attached to this Information Disclosure Statement as Exhibit D. If there are any other

documents that the Examiner would like copies of, Applicants would be happy to supply them.

Applicants respectfully request that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and Applicants determine that the cited document do not constitute "prior art" under United States law, Applicants reserve the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

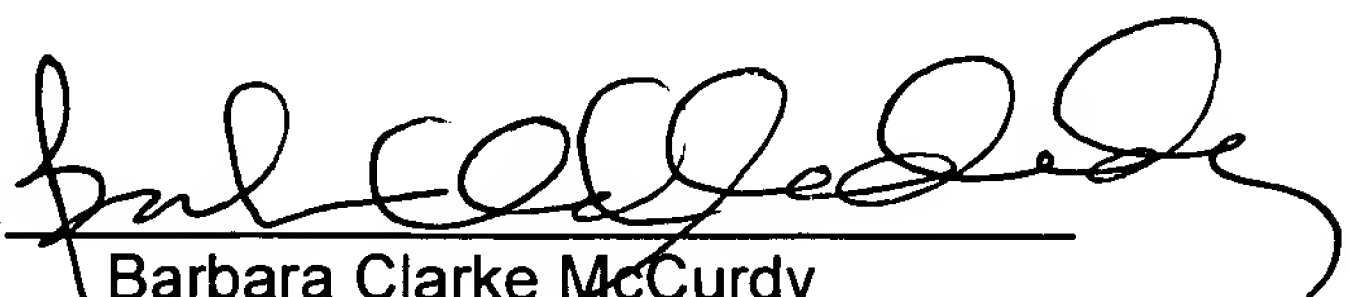
Applicants further reserve the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: October 14, 2008

By: 
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